MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 155 OF 1996

SMT. RATNAPRABHA VITHAL TOPLE)
residing at Tople Niwas, 1st)
floor, Vijay Colony, Barfiwala)
Marg,Andheri (W),Bombay 400 058) .. APPELLANT

VERSUS

1. MRS. SABESTIAN D'CONHA)
2. ANTONY D'CONHA)
3. AUSTIN D'CONHA)
All residing at Flat No. 1)
ground floor, Tople Niwas,)
Barfiwala Marg, Andheri (W))
Bombay 400 058.)(Org.Accs.d 2,3&4)
4. THE STATE OF MAHARASHTRA) RESPONDENTS

Mr. Ashish Sawant h/f M. S. Mohite for appellant

Mr. N. K. Singh i/b M. P. Vashi & Associates for respondents 1 to 3

Smt. V. R. Bhosale, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 18, 2007.

ORAL JUDGMENT:

. Respondents 1 to 5 were tried in the court of Metropolitan Magistrate, 44th Court, Andheri in Case No. 53 of 1992 for offences punishable under Sections 498(A), 323,504,506(ii), 509 read with 114 of the Indian Penal Code. Respondents are original accused 1 to 5 respectively and for convenience they are referred to in this judgment as per their status and description in the trial court.

2. It may be stated here that accused 1 is dead and appeal as against him has abated. Name of accused 5 has been deleted vide this court's order dated 27/1/97. Appeal, therefore, survives only as against accused 2,3 & 4.

3. By the impugned judgment and order the learned Magistrate acquitted the accused and hence original complainant has filed the present appeal.

4. Admittedly the relations between the complainant and the accused were strained. A suit was pending between the complainant and the accused in the Small Causes Court at Bombay. Similarly a

criminal case being Case No. 321/S/1966 was pending in the Andheri Magistrate's court between the parties. It appears that subsequently the parties settled the said pending matters.

5. Admittedly the accused are the tenants of the complainant. It is the case of the complainant that on 27/10/88 at about 9.00 a.m. when she was going out for marketing, accused 3 and 4 rushed on her near the gate of her building, Accused 4 abused her, He used filthy and insulting language. Accused 1, 2 and 5 surrounded her. They used filthy language and threatened her that they would cut her legs. They further threatened her that they would throw acid and disfigure her. According to her she got annoyed and asked them to go away from the place. Accused 4 threw a stone on her left foot which caused injury to her left foot.

6. PW 2 Mr. N. R. Jagdale, who had come to the complainant for some personal work claims to have seen this incident. According to the complainant thereafter she went to the D.N. Nagar Police Station and reported the matter. She went to Cooper Hospital for treatment. At Cooper Hospital

she was treated. A medical certificate was issued to her which is on record at Exh.-P-6. At D. N. Nagar Police Station her N.C. was recorded being N.C No.8765/88. She thereafter filed a private complaint in the court.

7. The complainant examined herself and PW 2 Narayan Ramchandra Jagdale. The complainant also examined PW 3 Dr. Sandip Bhalchandra Pargaonkar, who has proved medical certificate Exh.-P-6. The accused filed their written arguments. According to the accused the complainant has filed a false case. According to the accused the complaint is the result of previous enmity.

8. After perusing the evidence on record the learned Magistrate was of the view that the complainant had failed to prove her case against the accused. In the circumstances the learned Magistrate acquitted the accused. Hence this appeal.

9. I have heard at some length. Mr. Sawant, learned counsel appearing for the appellant/complainant and Mr. Singh, the learned counsel appearing for the accused.

10. The learned counsel for the appellant contended that the impugned judgment and order is perverse. He submitted that the evidence of the complainant Mrs. Tople is consistent with her complaint and the evidence of PW 3 Dr. Sandip Pargaonkar. He submitted that PW 2 Narayan Jagdale also corroborates the complainant. He submitted that the learned Magistrate erred in observing that the evidence of Narayan Jagdale is not consistent with the evidence of the complainant. He submitted that the learned Magistrate ought to have appreciated that, if the evidence of Narayan Jagdale was identical to the evidence of the complainant, that would have in fact established that Narayan Jagdale was tutored.

11. The learned counsel submitted that in the nature of things there is bound to be some difference in the testimonies of two witnesses. But that would in fact establish the genuineness of the complainant's case. The learned counsel further submitted that Dr. Pargaonkar's evidence and the medical certificate issued by him indicate that the complainant had received injury on the relevant day on her foot. The medical evidence,

therefore, completely bears out the case of the complainant. There is no reason for the complainant to falsely implicate the accused. He submitted that in the circumstances, the impugned judgment and order be set aside and the accused be convicted in accordance with law.

12. On the other hand the learned counsel appearing for the accused submitted that the impugned judgment and order is well reasoned. Inconsistencies in the evidence of PW 1 and PW 2 indicate that the complainant's version is not true and she has tried to involve the accused out of previous enmity. He submitted that the prosecution has not disclosed the true facts. He submitted that by no stretch of imagination the impugned judgment can be called perverse, warranting interference by this court and hence the appeal be dismissed.

13. Admittedly the relations between the complainant and the accused were strained. A suit filed in the Small Causes Court was pending between the two sides. Similarly another criminal complaint was pending between the two sides. Subsequently both these matters came to be

compromised. According to the complainant after compromise again there was friction between the two sides. This history will have to be kept in mind while dealing with the present case. Possibility of false involvement or at any rate some exaggeration cannot be ruled out.

14. The complainant's case rests only on her testimony and testimony of PW 2 Narayan Jagdale, who was working with her and was very well known to her. Admittedly no independent witness has been examined by the complainant. The complainant has given details of the alleged incident. PW 2 Narayan Jagdale has failed to give any details of the incident. He has merely stated that the accused threw stone and hit the complainant on her left leg. It is true that Dr. Pargaonkar has deposed about the injury suffered by the complainant and the medical certificate is on record. However, in the absence of independent and cogent evidence corroborating the case of the complainant mere evidence of Dr. Pargaonkar stating that the complainant had received injury on the day of incident will not establish the guilt of the accused. There has to be conclusive evidence to establish that the accused caused the injury.

The learned Magistrate has on considering and comparing the evidence of PW 1 and PW 2 come to a conclusion that their evidence as regards the incident in question is not consistent. The view taken by the learned Magistrate is a reasonably possible view, considering the background of strained relationship of parties.

15. It is well settled that while dealing with an appeal against order of acquittal, the appellate court has to keep in mind that the presumption of innocence of the accused is strengthened by the order of acquittal and unless compelling reasons are present suggesting that the impugned order is perverse, the appellate court should not interfere with it. It is also well settled that merely because on the same set of facts some other view is possible the appellate court should not substitute the view taken by the trial court with that view, if the trial court's view is a reasonably possible view.

16. In the light of the above well settled principles, I am of the view that since the view taken by the trial court is a reasonably possible view, no interference is called for with the

impugned judgment and order. The appeal is, therefore, dismissed.

JUDGE.

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SABESTAIN D'CONHA & ORS. .. RESPONDENTS

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Smt. V. R. Bhosale, APP

CORAM: **SMT. RANJANA DESAI,J.**

DATE: SEPTEMBER 18, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment, this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 155 OF 1996

DATE OF DECISION:18/9/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)